In the Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed May 17, 1901.

No. 18, Original.

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EX PARTE: IN THE MATTER OF THE PETITION OF THE WILDER'S STEAMSHIP COMPANY FOR WRIT OF MANDAMUS

vs.

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, THE HONORABLES WILLIAM B. GILBERT, ERSKINE M. ROSS, WILLIAM W. MORROW, JUDGES THEREOF, RESPONDENTS.

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## BRIEF IN REPLY.

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DUANE E. FOX,
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*Attorneys for The Wilder's Steamship Company, Petitioner.*


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## BRIEF IN REPLY.

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### STATEMENT OF MATERIAL QUESTION.

The petitioner, replying to the brief filed in opposition to the issuance of the writ, has this to say:

The material question presented is: **Does the act of 1900, in any of its provisions, make applicable to Hawaii the provisions of the act of 1891 relating to appeals, in admiralty causes, from the final judgments of territorial supreme courts?**

In this consideration it must be admitted that section 86 of the act of 1900 in terms does not touch the question, and the effort is therefore made to show that such appeals are excluded on the theory that certain other sections of the act, taken together with this one, were intended to provide a *complete* judicial system, and that as the system so provided does not touch the question, such appeals are necessarily excluded therefrom.

## I.

### SOURCE OF COURT'S JURISDICTION.

As a preface to our criticism of this argument, it may not be out of place to reply briefly to respondents' contention as to the source of the jurisdiction of the courts of the Hawaiian islands over *admiralty causes* during the so-called transition period. It is advanced in argument that *such* causes—for they are necessarily included in the expression "pending actions"—"must be treated as governed entirely by the *municipal laws* then in force" (page 17 of brief), for "until the organic act went into effect there was no statute of the United States which had any operation in Hawaii" (page 10 of brief).

If this be so, then it necessarily follows that the court's jurisdiction was derived from such "municipal laws."

This conclusion we cannot admit.

Upon the transfer of sovereignty the Congress provided:

"The municipal legislation of the Hawaiian islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution, nor contrary to the Constitution of the United States, nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine" (Joint resolution of July 7, 1898, 30 Stats., 750).

The question then presented is, Would a municipal law of the Republic of Hawaii granting to a former court of that extinct government jurisdiction over an *admiralty cause* be a law *inconsistent* with the joint resolution or *contrary* to the Constitution of the United States?

We submit that obviously it would be both *inconsistent*, in that the resolution itself provides that:

"Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands, shall be vested in such person or persons, and shall be *exercised* in such manner as *the President of the United States shall direct;* and the President shall have power to remove said officers and fill the vacancies so occasioned."

*and contrary to the Constitution of the United States*, for the reason that a court held to be created and exercising jurisdiction over admiralty and maritime causes, *within territory under American sovereignty*, by virtue of a municipal law of the former Republic of Hawaii, would be so exercising such jurisdiction in plain violation of article III, section 2, of the Constitution.

It is our contention that the court of this transition period was a creation of Congress. To hold otherwise is to deny to Congress and to the President, acting under its authority, the right, *which was exercised*, to direct how the "civil, judicial, and military powers" of the Hawaiian islands should be "*exercised*" after the passage of the act annexing these islands "as a part of the territory of the United States" and "subject to the sovereign dominion thereof." Nor does it lend aid to the contention of the respondents that by section 7 of the act of 1900 the "constitution of the Republic of Hawaii" and certain "laws of Hawaii" were repealed. These were not thus repealed as laws deriving their force from the legislative enactments of an extinct republic, but as laws whose sole efficacy sprang from the exercise of legislative power temporarily invested in the President of

the United States. And these laws are referred to in the repealing clause of the act of 1900 as "*the laws of Hawaii*," because section 1 of this act provides that the phrase "*the laws of Hawaii* as used in this act without qualifying words shall mean the constitution and laws of the *Republic of Hawaii in force* on the twelfth day of August, 1898, at the time of the transfer of the sovereignty of the Hawaiian islands to the United States of America," and which were subsequently continued *in force* by the exercise of the power conferred on the President of the United States by the act of 1898.

It is absurd to claim that after the extinction of the sovereignty called the Republic of Hawaii by its annexation to the United States any power was left in that sovereignty. Whatever powers, judicial or other, were thereafter exercised were exercised, not by authority of the body of municipal law under the sanction of an extinct government, but by authority of the sovereignty to which the islands had become subject.

"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred."

Cooper *vs.* Reynolds, 10 Wall., 308.

The fact that Congress, by the joint resolution, temporarily continued in force, "until Congress shall provide for the government of such islands," the body of substantive law formerly existing in the Hawaiian islands does not alter this principle. Such laws, when so continued in force, were not the municipal laws of the former Republic, but a body of laws enacted and deriving their entire authority from the sovereignty of the United States.

The act of 1898 was superseded entirely by the act of 1900, and therefore all questions of procedure and jurisdiction must be governed by the provisions of the later act. It

follows necessarily that "*the laws of Hawaii*," which were in force at the date of the going into effect of the act of 1900, were not the municipal laws of the former Republic, but the laws made efficacious by the joint resolution of July 7, 1898, and the order of the President based thereon. The expression "the laws of Hawaii heretofore in force," as used in section 81 of the act, can only refer to such laws as had been adopted and revivified by the act of 1898, which in express terms excluded all those that were inconsistent with the resolution or contrary to the Constitution, and even the laws so adopted were by this section of the act of 1900 continued in force only "*except as herein otherwise provided.*"

Out of that court, to which had been given jurisdiction of a Federal question, and which had been exercising such jurisdiction, there is created the supreme court of the Territory of Hawaii (section 81), and it is from the final judgment of such court *in an admiralty cause* that we seek an appeal.

It is irrelevant for the respondents to discuss the possible status or right of a litigant against whom such a final judgment *might* have been rendered during the period from August 12, 1898, to June 15, 1900, for during such time Hawaii was not an organized Territory, nor was its court the "supreme court" of an organized Territory, nor had the general *laws* of the United States *relating to appeals* from final decrees been extended to the Hawaiian islands.

## II.

### HAWAII'S JUDICIAL SYSTEM DOES NOT PRECLUDE APPEAL.

We take up now the consideration of the *theory* that the act of 1900 provides for the Territory of Hawaii a judicial system which necessarily precludes the appeal for which we contend.

If our contention is well taken, that the transition period court of the Hawaiian islands derived its jurisdiction over

admiralty causes, in the first instance, from the act of 1898, and derived its power to *retain such* jurisdiction over pending causes and pass final judgment therein by virtue of section 10 of the act of 1900, then this fact is clearly presented:

*The supreme court of the Territory of Hawaii has, under laws of the United States, rendered a final decree in an admiralty cause.* Is there any Federal statute which allows an appeal from such decree? And, if so, does the judicial system provided for by the act of 1900 preclude the application of such law to the Territory of Hawaii?

We contend that, except as may be otherwise provided in the act of 1900, section 5 of that act is a re-enactment of those laws of the United States not "locally inapplicable" to the Territory of Hawaii. And if, therefore, neither section 86 nor any other provision of the act relates to appeals in admiralty causes from the final decrees of the supreme court of the Territory of Hawaii, then section 5 makes applicable *any* law of the United States bearing on that subject, and such a law is found in the act of 1891.

This conclusion is not in the least weakened by the transfer of jurisdiction over future causes of this nature from the territorial courts to the district court created by section 86, the territorial supreme court having been given, by section 10, the right to carry such causes then pending to final judgment and execution.

Respondents' construction of the clause of section 86 which attempts to cover *all classes of appeals* is not tenable. The conclusive reply is that it does not cover the class petitioner's appeal comes under.

Respondents say that "there is a specific provision in the act, that in matters of appeal the supreme court of Hawaii is to be 'governed' by the laws of the United States in regard to appeals from the supreme courts of the States" (page 12 of brief).

We submit that a most casual reading of the clause of sec-

tion 86 referred to will show the error of the statement. The modifying word of the provision is "such," and it is entirely overlooked in respondents' argument. The clause reads:

"The laws of the United States governing appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in *such* matters and proceedings, as between the courts of the United States and the courts of the Territory of Hawaii."

How can *these* laws referred to "govern" in a matter and proceeding which cannot arise between a Federal and a State court? The particular matter and proceeding we present is not within the purview of the laws referred to, nor, for reasons stated in our argument accompanying this petition, is there any implied repeal of *the* law (act of 1891) within whose purview this matter and proceeding does come.

The contention is made (page 15 of respondents' brief) that the judicial system provided by this act is an "exclusive system," and in this we are inclined to agree with the respondents, but we cannot admit that section 86 alone is to be looked to as establishing such system.

The relevant sections of the act of 1891 are engrafted into this system by section 5 of the act of 1900, unless it can be said that they are "locally inapplicable."

If any reply were needed to the contention that a statute providing for an appeal in an admiralty cause from the final decree of the supreme court of the Territory of Hawaii is "locally inapplicable," it is found in the argument of the subcommittee on the judiciary, cited at pages 7 and 8 of the respondents' brief, and we submit that in answer to such contention of respondents we can with propriety adopt and apply the reasoning of this committee, which doubtless led to the vesting of the exclusive admiralty jurisdiction in a *local* Federal court, thereby permitting appeals from the

final decrees of such court to a "continental" circuit court of appeals.

If the physical situation of the Territory of Hawaii were such as to make it *impossible* for maritime matters to arise within its boundaries, then a Federal statute relating to such matters might well be said to be "locally inapplicable."

In United States *vs.* American Bell Telephone Company (159 U. S., 551) it was held:

> "Where the appellate jurisdiction is described in general terms so as to comprehend the particular case, no presumption can be indulged of an intention to oust or to restrict such jurisdiction; and any statute claimed to have that effect must be examined in the light of the objects of the enactment, the purposes it is to serve, and the mischiefs it is to remedy, bearing in mind the rule that the operation of such a statute must be restrained within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it."

The court then said that the judiciary act of 1891, "well known as a matter of public history, manifest on the face of the act, and judicially declared in the leading cases under it, was to relieve this court of the overburden of cases and controversies," but that the act did not make final, in the circuit court of appeals, a case in which the United States sued in the circuit court to cancel a patent for an invention, although by section six of the same act the decree of the circuit court of appeals was made final "in all cases arising under the patent laws."

This conclusion was based on the provision in the last paragraph of section six that "in all cases not hereinbefore in this section made final, there shall be, of right, an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs." And the court held, speaking by Mr. Chief Justice Fuller:

"Judgments or decrees in cases in which the ground of jurisdiction of the circuit court is that the United States are plaintiffs or petitioners *are not made final in terms*, and such cases would fall within the last paragraph, unless restricted by the previous enumeration." * * *

"The motion may be disposed of upon the inquiry whether it was *manifestly the intention* of Congress to include such a case as that before us in the words 'arising under the patent laws.' * * * We are of opinion that it is reasonable to assume that the attention of Congress was directed to this class of cases" [actions and suits for infringements, &c.] "and that the language was used as applicable only to them; and that there is nothing in the objects sought to be attained and the mischiefs sought to be remedied by the act which furnishes foundation for the belief that Congress manifestly intended to place a limitation on the appellate jurisdiction of this court in a case such as this."

To the same effect are cited:

Petri *vs.* Commercial National Bank, 142 U. S., 644.
Brewer's Lessee *vs.* Blougher, 14 Peters, 178.
Reiche *vs.* Smythe, 13 Wall., 162.
Washington Market Co. *vs.* Hoffman, 101 U. S., 112.

We submit that the case just considered is a perfect analogy to the one at bar. In the pending case, as in that, there was general legislation, giving the right of appeal. In this case such appeal is from the supreme court of an organized territory to the circuit court of appeals, in a case made final in the circuit court of appeals, viz: an admiralty case. Therefore there can be no presumption against the jurisdiction on appeal.

Furthermore, admiralty causes pending in the supreme court of the Republic when the act of 1900 became effective "are not made final in terms" in that court, and full effect must therefore be given to the general provision of law granting the right of appeal.

Furthermore, we are to examine the statute claimed to limit such jurisdiction in the light of the objects of its en-

actment, and it is not difficult to do so. If there is any one object of the act of 1900 organizing the Territory that stands out more boldly than another it is the evident intention to divorce the jurisdiction in matters of ordinary local concern from those of usual Federal cognizance, and particularly to retain in the constitutional courts of the United States final jurisdiction in admiralty causes.

We are indebted to counsel for the respondents for presenting to the court most conclusive evidence of this fact, in the quotation from the report of the Hawaiian Commission referred to above. But we are unable to see how that report, upon which Congress acted in passing the act of 1900, and which found great advantage in "transferring all jurisdiction of a Federal nature to a district court of the United States to be established for the Territory of Hawaii," upholds the contention of the respondents that jurisdiction of that nature, already vested by the general legislation of 1891, should be confined to and should end in a court expressly recommended and established for the final determination of "all cases of a local nature."

On the contrary, admiralty causes are specially mentioned as the most conspicuous class of cases "which make this separation of jurisdictions desirable," and the report particularly says of admiralty causes:

> "It is obviously very desirable that jurisdiction over such cases should be exercised by Federal judges."

There can be no doubt that Congress intended that after the act of 1900 became effective all cases of a Federal nature might be finally decided in a constitutional court of the United States, either in this court, by appeal or writ of error from the supreme court of the Territory as from a State court, or in the circuit court of appeals under the legislation already existing in the act of 1891, or by appeal from the district court, as provided by the act of 1900. And such being the evident legislative intention, the operation of the

act of 1900, in so far as the language of section 10, taken by itself, might be claimed to vest final jurisdiction in that court as to pending cases, "must be restrained within narrower limits than its words import."

But the application of the act of 1891 does not, as contended, establish, by any part, a *separate* judicial system from that provided by the act of 1900. The application of the former act is of interest only to that limited and peculiar class of cases which, by section 10 of the latter act, the supreme court of the Territory is given power to pass to final judgment. And we submit that the order of this honorable court of April 15, 1901, attaching the Territory of Hawaii to the circuit court of appeals for the ninth circuit under *section 15 of the act of 1891* is one affecting *solely* final decrees in those causes, where, by virtue of the order of the President of the United States, made in pursuance of the authority granted by the joint resolution of July 7, 1898, the transition period court of the Hawaiian islands was given jurisdiction which ceased as to causes of the same nature brought after the act of 1900 went into effect. We cannot interpret this order of assignment to mean *more* than this, for the classes of cases reached by the statute under which the order was made are such as at this time are within the exclusive jurisdiction of the district court and are appealable from such court to the circuit court of appeals for the ninth circuit by virtue of section 86 of the act and not by virtue of the order of assignment of this court.

In conclusion, we submit that the inference to be drawn from the argument of the respondents that the supreme court of a State has neither admiralty jurisdiction nor right of appeal to a circuit court of appeals is not pertinent here, for we have shown clearly that the supreme court of the organized Territory of Hawaii *had* admiralty jurisdiction and power to render a final decree at a time when, by statute, an appeal lay from such decree to a circuit court of appeals.

## III.

### ANTECEDENT STEPS OF APPEAL.

And this brings us to a discussion of the next point raised by the respondents in opposition to the issuance of the writ, namely:

"No appeal lay in any event to the circuit court of appeals for the ninth circuit at the time when notice of appeal was given after the final decree of the Hawaiian court. At that time Hawaii had not been assigned by this court to that circuit" (page 27 of brief).

We believe counsel to be in error in stating that "the present application is not for a writ commanding the circuit court of appeals to allow an appeal" (page 27 of brief).

Paragraph 12 of the petition reads in part as follows:

"That thereafter your petitioner, by its attorneys, presented said stipulation and bond and *petition for appeal* to the said United States circuit court of appeals for the ninth circuit, *and moved for allowance of an appeal.* * * * Whereupon on, to wit, April 1, 1901, said court denied said motion, holding that it was without jurisdiction to entertain said appeal." * * *

Paragraph 20 reads in part as follows:

"Your petitioner further avers that there is * * * substantial error * * * in the opinion and order of said United States circuit court of appeals for the ninth circuit denying said petition and *motion for allowance of appeal.*" * * *

Paragraph 21 reads in part as follows:

"That owing to the refusal of said United States circuit court of appeals for the ninth circuit *to take jurisdiction of said cause* * * *."

The parts of the prayer relevant to the point are as follows:

"And therefore your petitioner further humbly prays that a writ of mandamus in due form may issue herein, directed to the said United States circuit court of appeals for the ninth circuit and to the honorable judges thereof, * * * commanding and enjoining them to set aside said order of said court, * * * denying said petition and motion for *allowance of appeal* of your petitioner as appellant therein, and to entertain said cause, * * * and to hear and decide the same on its merits, and for such other and further relief," &c.

The *order* above referred to is one denying a petition and motion "*for allowance of an appeal*" (page 26 of petition).

We submit that the foregoing shows clearly that this *is* a petition for a writ commanding *the allowance of an appeal.* Petitioner's appeal to the circuit court of appeals for the ninth circuit was and is a continuing appeal, as were all the antecedent steps necessary to its accomplishment, and respondents' refusal to allow the appeal is a continuing refusal.

If, however, this latter statement were arguable, then petitioner's additional evidence, offered to this court on the return of the rule to show cause, showing that *since* the order assigning the Territory of Hawaii to the ninth circuit, to wit, on the 3d day of May, 1901, the allowance of its appeal was again denied, is conclusive on this point.

Assuming that the respondents can rightfully raise in this proceeding a question touching the validity of the antecedent steps of our appeal, when the irregularity, *if it exists at all,* was certainly waived by the *appellees* in entering into the stipulation as to an appeal bond (page 15 of petition), we ask this court, if it sees any merit in this showing of cause, yet finds virtue in our petition, in the exercise of justice, to issue a special *nunc pro tunc* order as of date June 15, 1900, as prayed for in said petition. Through no fault of petitioner does there exist any irregularity in the antecedent steps of its appeal.

That provision in section 15 of the act of 1891 which declares in what cases the circuit court of appeals shall have appellate jurisdiction is jurisdictional. The further provision in the same section as to the assignment of territories to the various judicial circuits "is but modal and formal."

Ayers *vs.* Watson, 113 U. S., 594.

Where the statutory provision is of the latter class, even the mistakes of an appellant are excused.

Davis *vs.* Wakelee, 156 U. S., 680.

Powers *vs.* Chesapeake and Ohio R. R. Co., 169 U. S., 92, and cases cited.

In the present case there has been no omission or laches on the part of the appellant, and it has in good faith performed every duty which lay upon it in its effort to avail itself of the right of appeal granted by statute.

"While we have always been careful to see that the required order of procedure has been complied with before any case shall be considered as transferred from a lower to a higher court, that the party seeking a review must act in time and must make a substantial compliance with all that the statute prescribes, at the same time we have been equally careful to hold that no mere technical omission which did not prejudice the rights of the defendant in error should be made available to oust the appellate court of jurisdiction."

Mutual Life Ins. Co. *vs.* Phinney, 178 U. S., 337.

## IV.

### MANDAMUS THE PROPER REMEDY.

We come now to a discussion of the last point raised in respondents' brief, and set forth in the fourth paragraph of the respondents' return, namely, that "the determination by the circuit court of appeals of the ninth circuit, that it had no jurisdiction of this appeal, was a judicial determination which cannot be reviewed by mandamus" (page 29 of brief). Or, as put in the return:

"That the said circuit court of appeals properly decided on the facts set out in the said petition that said court had no jurisdiction to proceed in the said matter and that its decision and order in the said matter constituted a final judgment therein which is properly subject to review by this honorable court by writ of certiorari" (page 2 of return).

Our sufficient reply to this contention is, that a writ of certiorari brings up the whole record of the case to the higher tribunal for review. In the present matter there is no such record in the circuit court of appeals for the ninth circuit, for the obvious reason that the door of that court has been closed against its admission. Petitioner was never in that court, except for the sole purpose of presenting and asking that its appeal be allowed. We submitted to the court our motion, the court heard it, and issued its order of denial. The petitioner, with its record, is still at the threshold seeking admission.

In this case the order does not *dismiss*, but *denies* an appeal. In brief, the court refuses to take jurisdiction, when by law it should, and the fact that it has given its interpretation of the law is not conclusive of what the law is.

Every wrongful refusal of a lower court *to allow an appeal* is a judicial *interpretation* of the law for which the remedy is by mandamus alone.

The cases cited by respondents are not in point; for in each of them the case and its subject-matter was actually pending before the court, and the action complained of was (to use the language of this court in *Ex parte* Nininger, 150 U. S., 150, cited by the respondents) "had in the exercise of legitimate jurisdiction" of such court.

In the present case action was not had "in the exercise of legitimate jurisdiction" of the court, but the court *refused* to exercise the legitimate jurisdiction conferred upon it by statute.

The principle governing the issue of writs of mandamus by this court under the present circumstances is stated in

the cases cited in our original brief in support of the petition. The following additional cases are to the same effect:

"The general power of the court to issue a writ of mandamus to an inferior court, to take jurisdiction of a cause when it refuses to do so, is settled by a long train of decisions; but mandamus only lies, as a general rule, where there is no other adequate remedy; nor can it be availed of as a writ of error."

*Re* Atlantic City R. R. Co., 164 U. S., 635.
*Re* Hohorst, 150 U. S., 653.

In the present case no writ of error lies, nor is there any other adequate remedy. The following language of this court is therefore particularly in point:

"This writ is applicable only in the supervision of the proceedings of inferior courts, in cases where there is a legal right without any existing legal remedy. * * * Without, therefore, the use of the writ of mandamus, however flagrant the wrong committed against these officers, they would be destitute of any redress."

*Ex parte* Bradley, 7 Wall., 364.

For the reasons advanced herein and in the argument accompanying the petition, we respectfully submit that cause has not been shown, and that the writ should issue as prayed for.

Respectfully submitted.

DUANE E. FOX,
NATHAN H. FRANK,
KINNEY, BALLOU & MCCLANAHAN,
*Attorneys for The Wilder's Steamship Company, Petitioner.*

Office Supreme Court U. S.
FILED
MAY 13 1901
JAMES H. McKENNEY
Clerk.

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## Motion for Leave to File Additional Evidence.

Now comes the petitioner herein and shows that, since it filed its petition for mandamus in this Court, this Court has, by order regularly made on April 15, 1901, assigned the Territory of Hawaii to the Ninth Judicial Circuit, and on the same day ordered that a rule to show cause issue herein.

And that thereafter, to wit, on May 3, 1901, this petitioner did present to the Circuit Court of Appeals for said Ninth Judicial Circuit a further petition for allowance of appeal

FILED
MAY 13 1901
JAMES H. McKENNEY,
Clerk

9 ~~10~~ Orig.

IN THE

# United States Circuit Court of Appeals

## FOR THE NINTH CIRCUIT.

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WILDER'S STEAMSHIP COMPANY, A HAWAIIAN CORPORATION, AND THE STEAMSHIP "CLAUDINE," LIBELEES AND APPELLANTS,

*vs.*

GEORGE U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKELS, G. WEMPE, WILLIAM CARSON, H. D. BENDIXEN, JAMES H. NELSON, M. C. SIVERSON, N. J. McLEOD, G. M. FAGERLUND, J. S. HELLIGEN, JOHN PILTZ, AND HENRY M. WETHERBEE, LIBELLANTS AND APPELLEES.

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*To the Honorable United States Circuit Court of Appeals for the Ninth Circuit:*

The petition of Wilder's Steamship Company, the libelee and appellant herein, respectfully shows as follows:

I.

That on the 5th day of February, A. D. 1900, the above-named libellants filed a libel in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii against the above-named libelee, in a cause civil and maritime to re-

cover the sum of Sixty-four Thousand (64,000) Dollars, for damages alleged to be due the libellants from the libelees, as by reference to said libel will more fully appear.

II.

That thereafter on the 5th day of March, A. D. 1900, the said Wilder's Steamship Company duly appeared and filed its answer to said libel, praying that the said libel be dismissed with costs, as by reference to said answer will more fully appear.

III.

That while said cause was pending in said Circuit Court for the First Judicial Circuit of the Territory of Hawaii, namely, April 30th, A. D. 1900, a certain Act of the Congress of the United States was passed and approved, entitled "An Act to provide a Government for the Territory of Hawaii," and said Act by the terms thereof took effect forty-five days from and after the approval thereof, to wit: on June 15th, A. D. 1900.

IV.

That thereafter after the passage of said Act of Congress but before it took effect, said cause came on regularly to be heard, and on the 7th day of May, 1900, a decree was rendered in said cause against the said Wilder's Steamship Company in the sum of Fifty-five Thousand (55,000) Dollars, from which decree the said Wilder's Steamship Company made and perfected its appeal to the Supreme Court of the Territory of Hawaii, as provided by the then existing law of said Territory.

V.

That thereafter said cause on appeal came on regularly to be heard before the Supreme Court of the Territory of

Hawaii, and on the 25th day of October, A. D. 1900, said Supreme Court rendered its decision in said cause, awarding damages against the said Wilder's Steamship Company in the sum of Fifty-four Thousand Six hundred and thirty and $\frac{75}{100}$ (54,630.75) Dollars.

VI.

That in accordance with said decision a final decree of said Supreme Court was made and entered on the 9th day of November, A. D. 1900.

VII.

That thereafter on said 9th day of November, A. D. 1900, the said Wilder's Steamship Company gave due notice of its intention to appeal said cause to the United States Circuit Court of Appeals for the Ninth Circuit, and upon said day duly filed with said Supreme Court its notice of appeal and assignment of errors.

VIII.

That on Monday, the 15th day of April, 1901, it was ordered by the Supreme Court of the United States that the Territory of Hawaii be and it is hereby assigned to the Ninth Judicial Circuit, under section 15 of the Judiciary Act of March 3rd, 1891.

IX.

That the above-named libelee and appellant the Wilder's Steamship Company is advised and insists that said final decree of said Supreme Court of the Territory of Hawaii is erroneous, and for this reason it does appeal from said final decree to the United States Circuit Court of Appeals for the Ninth Circuit, and on said appeal intends to seek a new decision on the law and the facts, upon the pleadings and proofs in said Supreme Court, and upon new pleadings and

proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the Ninth Circuit, and that said decree may be reversed, and the libelants herein be decreed to pay the costs of the libelee in the said Territorial Courts and in this Court.

Wherefore, the said Wilder's Steamship Company respectfully petitions this Honorable Court for an allowance of its said appeal from the said final decree of the Supreme Court of the Territory of Hawaii made and entered on the 9th day of November, A. D. 1900.

Dated, San Francisco, May 3rd, A. D. 1901.

KINNEY, BALLOU & MCCLANAHAN,
NATHAN H. FRANK,
*Proctors for Libelee and Appellant.*

The foregoing application for the allowance of an appeal is hereby denied and said appeal disallowed.

Dated, May 3d, 1901.

WM. B. GILBERT,
ERSKINE M. ROSS,
WM. W. MORROW,
*Judges, Circuit Court of Appeals,*
*Ninth Judicial Circuit.*

(Endorsed:) Petition for Appeal to United States Circuit Court of Appeals for the Ninth Circuit and Order Denying Same. Filed May 3, 1901. F. D. Monckton, Clerk.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true and correct copy of a "Petition for Appeal to United States Circuit Court of Appeals for the Ninth Circuit and Order Denying Same," this day filed in the cause entitled The Wilder's Steamship Company (An Hawaiian Corporation), Appellant, *vs.* George U. Hind *et al.*,

No. 662, as the original thereof remains of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 3rd day of May, A. D. 1901.

{ Seal United States Circuit Court of Appeals, Ninth Circuit. }

F. D. MONCKTON, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled May 3, 1901. F. D. M., clerk. }

[Endorsed:] No. 662. U. S. Circuit Court of Appeals for the Ninth Circuit. Wilder's Steamship Co., Appellant, *vs.* George U. Hind *et al.* Certified copy of Petition for Appeal to U. S. Circuit Court of Appeals, 9th Circuit, and Order Denying Same.